

Decision **DRAFT DECISION OF ALJ BROWN** (Mailed 8/5/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resources Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**PETITION OF THE OFFICE OF RATEPAYER ADVOCATES
FOR MODIFICATION OF DECISION 04-06-011**

Summary

This decision denies the Petition filed by the Office of Ratepayer Advocates (ORA) to Modify Decision (D.) 04-06-011.

Background

On June 9, 2005, ORA filed a Petition to Modify (PTM) D.04-06-011 mailed June 10, 2004. D.04-06-011 approved a number of electric resource contracts for San Diego Gas & Electric Company (SDG&E) that were the winning bidders in a grid reliability request for proposal. One of the contracts the Commission approved for SDG&E was a 10-year power purchase agreement (PPA) with Calpine Corporation (Calpine) for the output of Calpine's Otay Mesa generating plant (OMGP). As part of the approval of OMGP, the Commission also acknowledged that Calpine would be providing a \$16 million transmission interconnection that would connect OMGP with SDG&E's existing Miguel Substation. In that decision the Commission also clearly delineated that the \$16 million for interconnection facilities was distinct from the new Otay Mesa

transmission project that was the subject of a separate application by SDG&E, Application (A.) 04-03-008.

In the PTM, ORA urges the Commission to modify language relating to the \$16 million interconnection line to clearly distinguish those upgrades from the new transmission project, so that there will be no confusion as to whether the Commission approved the new Otay Mesa transmission project when it approved OMPG and the interconnection facilities.

On July 11, 2005, Calpine filed a response to the ORA PTM and provided arguments in support of denying the PTM.

Discussion

In its request to the Commission for approval of the electric resource contracts, SDG&E did ask for approval of the Otay Mesa transmission project as a condition precedent to the approval for the Otay Mesa generating plant. However, after a thorough perusal of the language used in D.04-06-011, the Commission is confident that it clearly distinguished the \$16 million interconnection project from the new Otay Mesa transmission project that was anticipated to cost at least \$127 million.¹ In particular, in D.04-06-011, the Commission stated:

“The Commission views the required transmission interconnection upgrades of \$16 million for Otay Mesa to be necessary and reasonable and solely

¹ During the evidentiary hearings on OMGP, SDG&E’s witness testified that he anticipated that the projected cost of the new transmission project was \$127.8 million. However, when SDG&E filed A.04-03-008, for a certificate of public convenience (CPCN) and necessity for the project, the costs were estimated to be \$155.8 million. The costs continued to escalate and in D. 05-06-061 the Commission approved a \$209 million cost cap for the upgrades.

attributable to the Otay Mesa generation facility. . . . Our approval of the upgrades to allow Otay Mesa to connect with the Miguel line will not prejudice our consideration of any other new transmission projects or upgrades to existing ones. In particular, nothing we order in this proceeding prejudices SDG&E's application in A.04-03-008.

Based on the evidence presented, we do not consider the remainder of SDG&E's proposed transmission enhancements, the subject of A.04-03-008, to be part of the Otay Mesa generation proposal.”²

In the same section of D.04-06-011, the Commission did recognize that “the output of Otay Mesa is not fully deliverable, and cannot fully satisfy SDG&E's local reliability needs, without some transmission system upgrade.” However, the decision continued on and stated “[w]hether that upgrade should be the two 230 kV lines proposed in A.04-03-008, or some alternative, will be determined during the course of the Commission's review of A.04-03-008.”³

A.04-03-008 was thoroughly reviewed by the Commission. The application requested that the Commission issue a CPCN for the proposed two 230 kilovolt (kV) lines, and the application triggered a complete environmental impact report (EIR) on the two proposed lines and alternatives. In addition, a record was developed through testimony and rebuttal testimony and opening and reply briefs. When the draft EIR was completed, it was circulated for public review and comment and then a Final EIR issued. The decision in A.04-03-008 granted SDG&E a CPCN for the transmission lines and certified the Final EIR.

² D 04-06-011, p. 65.

³ D.04-06-011, pp. 65-66.

That decision, D.05-06-061, unambiguously found that “[W]e are convinced by the application, the testimony presented, and the briefs filed that OMPPA [the transmission project] is the appropriate upgrade to realize the full potential of Otay Mesa for grid reliability and RMR savings, to reduce congestion and to provide for expansion capability for load growth.”⁴

ORA’s request for a language change to D.04-06-011 is predicated on ORA’s belief that the language used in D.04-06-011 is ambiguous and that the \$16 million interconnection project was somehow intertwined with the \$127 million plus new transmission project and thus the Commission pre-approved the new project in D.04-06-011, before there were hearings and a record develop in A.04-03-008. As we have set forth above, we are convinced that the language in D.04-06-011 is clear on its own and requires no modification. D.04-06-011 addressed only the OMGP and the \$16 million in interconnection lines necessary to connect Otay Mesa to the Miguel Substation on the SDG&E system. The new transmission upgrades were the subject of a separate application, A.04-03-008, and were approved in a separate decision, D.05-06-061.

We are satisfied that D.04-06-011 is clear and unambiguous as it is written. We deem the modifications to the language of the decision as requested by ORA unnecessary and for that reason we deny the petition.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____.

⁴ D.05-06-061 at p. 63.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. D.04-06-011 approved a 10-year PPA between SDG&E and Calpine for the output of Calpine's OMGP, and approved a \$16 million transmission interconnection from OMGP to the Miguel Substation on SDG&E's existing transmission system.

2. D.04-06-011 did not approve SDG&E's request for Commission approval of a new transmission project that involved two 230 kV lines and was originally estimated to cost \$127 million.

3. SDG&E's request for Commission approval of the new transmission project involving two 230 kV lines was the subject of a separate proceeding, A.04-03-008.

4. The Commission approved the new transmission project in D.05-06-061.

5. The Commission's language in D.04-06-011 was clear and unambiguous that the new transmission project was not approved in that decision and in fact the project was the subject of a separate application.

6. There is no need to amend the language in D.04-06-011 to clarify that the decision did not authorize the new transmission project that was the subject of A.04-03-008.

Conclusions of Law

1. D.04-06-011 is clear and unambiguous as to the fact that it did not approve SDG&E's new transmission project for two 230 kV lines; therefore, the requested amendments to the language of that decision are not justified.

2. The ORAs' PTM D.04-06-011 should be denied.

O R D E R

IT IS ORDERED that the Office of Ratepayer Advocate's Petition to Modify Decision 04-06-011 is denied.

This order is effective today.

Dated _____, at San Francisco, California.